IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13-9-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.497 of 2003
W.P.M.P.Nos.18476, 18477 of 2003

The Vadalur Sarvodaya Nagar and
Boomidhan Residents Welfare Association,
(Regn.No.107/2002)
Vadalur, Cuddalore District,
rep.by its President N.Sadasivam ... Petitioner

Vs.

1. The Union of India,
rep.by the Secretary to Government,
Ministry of Environment and Forests,
6th Floor, CGD Complex,
Paryavaran Bhavan, Lodhi Road,
NEW DELHI

2. The State of Tamil Nadu,
rep.by the Secretary to Government,
Department of Environment and Forests,
Fort St. George, Chennai - 600 009.

3. Tamil Nadu Pollution Control Board,
rep.by its Member Secretary,
100, Anna Salai,
Chennai - 32.

4. The District Environment Engineer,
Tamil Nadu Pollution Control Board,
No.59, Seetharama Nagar,
Cuddalore - 607 001.

5. The District Collector,
Cuddalore.

6. STCMS Electric Company (P) Ltd.,
C.P.Ramaswamy Road,
Chennai.

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7. The Chettinad Lignite Transport Services Ltd.,
Vadalur, Cuddalore. ... Respondents

This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus forbearing the respondents from storage, transport of coal from or through Vadalur, Cuddalore District.

For Petitioner : Mr.T.Mohan

For 1st Respondent : Mr.P.Wilson,
Asst. Solicitor General

For Respondents 2 & 5 : Mr.D.Srinivasan,
Addl.Government Pleader

For Respondents 3 & 4 : Mr.Ramanlal

For 6th Respondent : Mr.Sriram Panchu,
Senior Counsel
for Mr.G.Anbumani

For 7th Respondent : Mr.Sathish Parasaran

O R D E R

(Order of the Court was made by S.J.MUKHOPADHAYA, J.)

The Writ petition was filed in public interest for forbearing the respondents from storage, transport of coal from or through Vadalur, Cuddalore District.

2. According to the writ petitioner, the 7th respondent-The Chettinad Lignite Transport Services Ltd., Vadalur, extracts lignite from mine 1A of the Neyveli Lignite Corporation (NLC) and transport the same to Vadalur Railway Station, wherefrom the coal is transported to the 6th respondent-The STCMS Electric Company (P) Ltd., Chennai. There are more than 100 families reside in Sarvodaya Nagar near the Vadalur Railway Station. The operation of the lignite depot at Vadalur results in high levels of suspended and respirable particulate matter being generated during various points such as, transport from the mine, storage at the bunker unit at Vadalur and transportation from the bunker to the silo by conveyance and transport from the silo to the zero unit. Apart from high risk to the ecology, there is also a high risk of serious human health impacts likely to be caused. The bunker is situated in an area, where there are more than 2400 houses assessed to property tax. There are many more hutments and low income residential housing in the area. The health impacts extend to over 40,000 people reside in and around Vadalur and over 25 villages, situate in the neighbourhood. The grievance of the

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petitioner is that the first respondent while granting clearance to the Power Plant, was under the impression that the transport of coal by road through lorries would be with adequate dust suppression measure adoption. This appears to be the claim in the Environment Impact Assessment. The matter having come to the notice of the petitioner, has alleged that though he represented the matter to the Government of Tamil Nadu on 23.9.2002, no action was taken.

3. During pendency of the writ petition, the petitioner filed an affidavit wherein it is alleged that he could learn that the 6th respondent Company, though obtained consent for establishment of the Unit in the year 1998 and commenced production activity in the year 2002, no public hearing or Environment Impact Assessment was conducted for the entire project.

4. The 7th respondent-The Chettinad Lignite Transport Services (P) Ltd., Vadalur, who is in fact the Transporter of lignite from Neyveli to Vadalur, while denied the allegation, has taken the plea that adequate safeguards have been taken to protect from any Environmental hazards apart from other steps taken for transportation of lignite from Neyvely to Vadalur to prevent any pollution. The lignite has very high moisture content and is not prone to fugitive emissions. NLC has been transporting lignite in open conveyors eversince the inception for several decades, but the 7th respondent has been transporting lignite from NLC in trucks, which are properly covered and sealed by tarpaulins. The trucks move along the road in the NLC land to the underground bunker, where the lignite is unloaded. A forced jet spray of water through nozzle has been installed to suppress emanation of any dust particles. The spray of water is inter-locked with dumping platform of the bunker so that it gets activated during unloading of lignite from trucks. The lignite, which is unloaded, is transferred from the bunkers to the silos by covered conveyors. These conveyors are covered on all sides. Water is sprayed through nozzles at transfer points in the conveyors for dust suppression. Any emission from each storage silos is taken to the respective bag filters that can filter particles upto 60 microns size. The clean, filtered and dust free air is released into the atmosphere. It is from the silos that the lignite is loaded into the railway wagons and other actions are taken. The following steps seems to have been taken by the 7th respondent:

(a) Providing dust suppression system through water spray nozzles for Dump Hopper, Transfer points in the conveyor and loading chutes.
(b) Bag filters to arrest dust in the silos.
(c) Covering all hoppers as well as conveyors with G.I. Sheets.
(d) Provisions of Green Belt around the unit.
(e) 17 mtrs. x 11 mtrs. Height wind cladding on all three sides of the dump hopper.

This apart, the 7th respondent also stated that they have taken adequate steps to provide a green belt around the Control Room area as well as developing a green belt cross at dump hopper area.

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5. In the counter affidavit of the 6th respondent it is submitted that the Environmental clearance in favour of the 6th respondent was obtained as back as on 3.5.1994; No Objection Certificate to set up the unit from the Tamil Nadu Pollution Control Board was obtained on 24.5.1994; consent to establish the plant under section 21 of the Air (Prevention and Control of Pollution) Act, 1981, and consent under section 25 of the Water (Prevention and control of Pollution) Act, 1974, were obtained on 2.6.1998. According to the 6th respondent, no hearing was required to be given in public at that stage and in fact a sum of Rs.1400 crores has been invested for the power project, which is functioning from the end of 2002.

6. The Tamil Nadu Pollution Control Board was asked to inspect and submit a report to find out as to whether the activities of the 6th and 7th respondents are detrimental to the public in general. In its report dated 5.9.2007 while it is stated that the Unit was inspected on 3.9.2007, the following statements are made therein:

"TAMIL NADU POLLUTION CONTROL BOARD

From
Er.R.Ramasubbu, M.E.,(PH).,
District Environmental Engineer,
Tamil Nadu Pollution Control Board,
83/6, Bharathi Road (1st Floor)
Cuddalore - 607 001.

To
The Member Secretary,
Tamil Nadu Pollution Control Board,
76, Mount Salai, Guindy,
Chennai - 600 032.

Lr.No.DEE/TNPCB/Ind/CUD/F.0015/2007, dated 05.09.2007

Sir,

Sub: TNPC Board - Hon'ble High Court, Chennai - W.P.No.497/2003-filed by Vadalur Sarvodaya Nagar - M/s.Chettinadu Lignite Transport Services (P) Limited, Vadalur - latest report - Submitted - Regarding.

Ref: 1. Bds Memo.No.TNPCB/LAW/LA-1/0737/2007, dated 30.08.20007.
2. Bds.Proc.No.T12/TNPCB/MIOCS/F719/CUD/W/2007/ dt.08.08.2007.
3. Bds Proc.No.T12/TNPCB/MIOCS/F719/CUD/A/2007/ dt.008.08.2007.

With reference to the above, I am submitting that, Consent to establishment is issued to the unit of M/s.Chettinadu Lignite Transport Services (P) Limited, Vadalur for carrying out collection, storage and transportation of 7000 T/Day of Lignite from this office proceeding No.DEE/TNPCB/CUD/F.OL-05/2002-1, dated 28.08.2002 under the Water (Prevention and Control of Pollution) Act, 1974, as amended and vide this office proceeding

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No.DEE/TNPCB/CUD/F.OL-05/2002-2, dated 28.08.2002 under the Air (Prevention and Control of Pollution) Act, 1981, as amended. The unit has commissioned the operation on 24.01.2003.

Subsequently frequent public complaints are raised from the nearby habitation regarding the lignite dust pollution. Hence, necessary direction has been issued to the unit under the Section 31-A of Air (Prevention and Control of Pollution) Act, 1981 as amended to carry out certain improvement measures vide Board's Proceeding No.TNPCB/LAW/LAI/022190/2003, dated 18.03.2005. The unit has also been requested to carry out certain improvement measures including the constructions of 3.0m ht. compound wall over which 3.0 m ht. G.I.Sheet as wind barrier vide reference vide Board's letter No.T12/TNPCB/719/RL/CUD/dated 06.04.2005. A show cause notice has been issued from this office vide reference vide this office Proceeding No.DEE/TNPCB/CUD/F.OL-05/2006, dated 07.06.2006 for operating the unit without the consent to operate of the Board under the Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 as amended (copy enclosed in Annexure-I).

The unit has furnished a reply to the above show cause notice (copy enclosed in Annexure-II). After complying with the directions and the improvement measures suggested by the Board, the unit has requested for consent to operate of the Board vide it's letter dated 19.08.2006 (copy enclosed in Annexure-III).

The unit was inspected on 07.06.2007 and found that the unit and the Air Pollution Control Measures were in operation was recommended for the issue of consent to operate to this unit under the both Acts to the Board office. Subsequently, consent to operate has been issued to the unit under the both Acts vide Board's Proceeding vide ref.2nd and 3rd cited subject to certain conditions.

The unit was inspected on 03.09.2007 and the compliances of the steps taken to prevent pollution as stated i the counter affidavit filed by the 7th Respondent, is furnished below:-

Sl. No.	Condition	Compliance
01	The Respondents are spraying water through dust suppression system while loading lignite into trucks at the mines stockpile itself.	Complied with.
02	The Respondents are transporting lignite in trucks that are fully covered by tarpaulin.	Complied with.
03	Originally the 5 k.m. road from dump hopper to NLC Mine IA stockpile area was a mud/kaccha road with lots of undulation. Now 800 Mtrs. of road from dump hopper have been converted into cement concrete road and the rest of them have been black topped and there is therefore no spillage.	Complied with.

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Sl. No.	Condition	Compliance
04	Concrete has been laid in the unloading platform and in the ramp area. Water is sprayed regularly on the roads from NLC Mine-IA to Vadalur dump hopper, unloading platform and in the ramp area thus controlling dust emission.	Complied with.
05	Greenery has been developed at the road sides and about 500 numbers of trees and plants were planted in and around dump hopper as a greenery development measure in 2003 and about 1300 plants were added in the year 2005.	Complied with.
06	Initially 8 Nos. of Multi tipper automatic water spray (Mist type) nozzles were installed in the dump hopper to prevent the pollution in east and south sides. To curb the dust pollution completely, additional 8 Nos. of multi-tipped automatic water spray nozzles have been added at a height of about 3 mtrs. above the existing nozzles to prevent the pollution in dump hopper during dumping lignite from tippers.	Complied with.
07	The dump hopper has been fully covered by vertical/ straight cladding G.I. Sheets. Initially louvre sheets were provided in dump hopper area. To prevent the dust emission completely louvre sheets have been converted into vertical/straight cladding sheets.	Complied with.
08	3 meters height Vertical/ Straight cladding sheets with rubber flaps have been provided on the top of the dump hopper in north and west sides to serve as a dust curtain.	Complied with.
09	The respondents have installed a windscreen arrangement to an effective height of 11 mtrs. above the ground level on three sides (North, east and south sides) of the dump hopper and to an effective total length of 170 mtrs. as per TNPCB advice which has eliminated the air pollution in the surrounding area.	Complied with.
10	The total conveyor system is covered with cladding G.I. sheets on both sides of the conveyor and top roof has been laid. The conveyor bottom is fully covered by deck sheets. Hence the pollution is completely controlled.	Complied with.
11	All the transfer points of the conveyors are equipped with water water spray nozzles for Dust Suppression.	Complied with.

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Sl. No.	Condition	Compliance
12	The skirt board sealing system is provided at all the transfer points to avoid the spillage from the belt conveyor.	Complied with.
13	Scrapper pads have been installed in all belt conveyors to wipe the sticking materials in the belt conveyor and hence spillages are highly reduced.	Complied with.
14	The respondents are having Dust collectors/bag filters on top of each silo to settle the particulate matter while filling the silos.	Complied with.
15	The louver type sheeting in the silo top is modified to Vertical/ Straight cladding type sheeting as per the advice of TNPC Board at all places of the conveying system, drive and tail stations.	Complied with.
16	Doors are provided with auto closing arrangement (Door Closer) in the entry points at silo top conveyor galleries.	Complied with.
17	The silo bottom is fully covered with G.I. Sheets on both the sides. GI cladding sheets and rubber pads are fixed on the rail entry and exit area as dust curtains.	Complied with.
18	The loading chutes have been installed with Dust Suppression System so that the water is sprayed in the form of mist and hence the emission of particulate matter is completely controlled during wagon loading.	Complied with.
19	The respondents have installed polycarbonate view glass in the GI Sheet Window in the north side of the silo bottom at the wagon loading area as per the TNPC Board advice.	Complied with.
20	Installing an Acoustic Enclosure around the generator set has also reduced the noise pollution created from the D.G.Set.	Complied with.
21	The respondents have been loading 58 wagons with multi engine for the past two years. Now the respondents are using 46 wagons with single engine and hence the noise created has also been drastically reduced.	Complied with.

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Sl. No.	Condition	Compliance
22	The respondents have planned to plant 1000 tree samplings in and around Vadalur Panchayat area as per the District Collector advice which process has commenced.	Under progress.
23	Thus suspended particulate matter generated during transportation and handling of lignite and noise pollution generated during loading operation and running the generator sets were identified and remedial actions were done according to TNPC Board recommendations. There is therefore no pollution as sought to be alleged.	Complied with.

The AAQ/ANL survey conducted on 11.07.2006 reveals that the parameters SPM, SO2 , NOx and ANL are within the tolerance limit specified for the Residential zone in all the location (copy enclosed).

This is submitted for favour of kind information and necessary action please.

Sd/- xxxxxxxxx
District Environmental Engineer,
TNPC Board, Cuddalore."

7. The learned counsel for the writ petitioner requested to verify as to whether the above report is correct or not. But, in the absence of any contrary material, we accept the report as submitted by the Tamil Nadu Pollution Control Board.

8. Now the only question arises is whether any public hearing was given before grant of Environmental Clearance, in favour of the 6th respondent.

9. It is informed that the Public hearing was made mandatory as back as on 27.1.1994, which was made optional on 3.5.1994. It was again made mandatory on 10.4.1997. In the present case, the Environmental Clearance was given in favour of M/s.Neyveli Lignite Corporation, on 23.12.1988, which was subsequently transferred in favour of the 6th respondent. Thereafter, Environmental Clearance in favour of the petitioner was given on 3.5.1994. For more than 8 to 10 years no objection was raised by any individual including the petitioner till the company invested the total amount and started functioning since December, 2002. In any case, the mandate of public hearing was made optional since 3.5.1994.

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10. From the above said facts it is evident that when the original Environmental Clearance was given in favour of NLC, there was no requirement for public hearing and subsequently when it was issued in favour of the 6th respondent, it was made optional. Again it was on the 10th April, 1997, it was made mandatory. In any case, now more than ten years have passed since the Company started functioning and the Tamil Nadu Pollution Control Board also after due verification, submitted a report in favour of the respondent and hence we are not inclined to decide the issue as raised in the amendment petition in W.P.M.P.No.18476 of 2003.

11. In these circumstances, no further order is required to be passed in the present case. The writ petition is disposed of. There will be no order as to costs. Connected miscellaneous petitions are closed.

vr

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Ministry of Environment and Forests,
   6th Floor, CGD Complex,
   Paryavaran Bhavan, Lodhi Road,
   New Delhi.

2. The Secretary to Government,
   Department of Environment and Forests,
   Fort St. George, Chennai - 600 009.

3. The Member Secretary,
   Tamil Nadu Pollution Control Board,
   100, Anna Salai, Chennai - 32.

4. The District Environment Engineer,
   Tamil Nadu Pollution Control Board,
   No.59, Seetharama Nagar,

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Cuddalore - 607 001.

5. The District Collector,
Cuddalore.

+ 1 cc to Mr.R.Ramanlaal Advocate SR.NO.57903
+ 1 cc to Mr.Salish Parasaran Advocate SR.NO.57459
+ 2 cc to Mr.G.Anbumani Advocate SR.NO.57338
+ 1 cc to Mr.P.Wilson Advocate SR.NO.57376
+ 1 cc to Govt.pleader SR.NO.57398

MDR(CO)
RD 20.9.07

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